

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON**

KING COUNTY, a governmental entity,

Plaintiff,

v.

VIRACON, INC., a Minnesota  
Corporation, QUANEX IG SYSTEMS,  
INC., an Ohio Corporation, and TRUSEAL  
TECHNOLOGIES, INC., a Delaware  
Corporation,

Defendants.

Civil Action No.

**COMPLAINT FOR DAMAGES**

**Jury Demand**

This is a civil action for damages and other relief, brought by Plaintiff King County, a governmental entity and political subdivision of the State of Washington, against Defendants Viracon, Inc., a Minnesota corporation (“Viracon”); Quanex IG Systems, Inc., an Ohio corporation (“Quanex”); and TruSeal Technologies, Inc. a Delaware corporation (“TruSeal”), pursuant to State of Washington statutory and/or common law.

**I. THE PARTIES**

**1.1** Plaintiff King County is a government entity and political subdivision of the State of Washington.

**1.2** Defendant Viracon is a corporation formed and headquartered in Minnesota and at all relevant times was doing business as a manufacturer of insulating

1 glass units for distribution and sale in the State of Washington, County of King.

2       **1.3** Defendant Quanex is an Ohio corporation headquartered in Texas and at  
3 all relevant times was doing business as a manufacturer of engineered and building  
4 products for distribution and sale in the State of Washington, County of King.

5       **1.4** Defendant TruSeal is a Delaware corporation with its headquarters in  
6 Texas, acquired by Quanex, and at all relevant times was doing business as a  
7 manufacturer of engineered and building products for distribution and sale in the State  
8 of Washington, County of King.

9       **1.5** At all relevant times mentioned herein, Quanex and TruSeal supplied Gray  
10 PIB to their customer Viracon. Quanex, TruSeal, and Viracon acted in concert to  
11 develop, produce, and place into the stream of commerce a product line of Insulating  
12 Glass Units containing Gray polyisobutylene ("PIB").

## 13                               **II. SUBJECT-MATTER JURISDICTION**

14       **2.1** This Court has subject-matter jurisdiction over the action pursuant to 28  
15 U.S.C. § 1332, et seq., as the action is between citizens of different states and the  
16 amount in controversy exceeds the jurisdictional minimum of \$75,000 exclusive of  
17 interest and costs.

## 18                               **III. PERSONAL JURISDICTION**

19       **3.1** This Court has jurisdiction over the Defendants Viracon, Quanex, and  
20 TruSeal based on their contacts within the forum including: a) they supplied materials  
21 and products in Washington for use within the judicial district of the Western District; b)  
22 they placed their products into the stream of commerce within Washington and  
23 specifically within the judicial district of the Western District; c) they caused injury and  
24 damages in Washington within the judicial district of the Western District by their acts or  
25 omissions both inside and outside the state; d) they derived substantial revenue from  
26 materials and products used in Washington within the judicial district of the Western  
27 District; and e) as otherwise authorized by law and consistent with the U.S. Constitution.

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#### IV. VENUE

4.1 Venue is proper in this Court pursuant to 28 U.S.C. § 1391, *et seq.*, as it is the judicial district in which: a) King County is located; b) a substantial part of the events or omissions giving rise to the claim occurred; and c) a substantial part of the property that is the subject of the action is situated.

#### V. FACTS

5.1 King County owns the Chinook Building (the “Building”) and the property on which it is located at 401 5<sup>th</sup> Avenue in Seattle, Washington. King County entered into a public private partnership with Goat Hill Properties to have the Chinook Building constructed on King County’s property. Goat Hill Properties, LLC, contracted Wright Runstad Associates Limited Partnership (“Wright Runstad”) to act as the developer and caused the construction of the Building to be performed for King County. The Building received its Certificate Of Occupancy from the City of Seattle Department of Planning and Development on September 25, 2007.

5.2 The Building’s exterior is a curtainwall system that includes glazing manufactured by Viracon, which contains components made by TruSeal and Quanex. This curtainwall exterior is comprised of large banks of multi-paneled windows, framed by champagne metal joinery, set within openings clad with cream granite. Each panel of the window bank is essentially a module fastened to the building’s structural frame and consists of multiple components including an insulated glass unit (“IG Unit”). In this manner, the IG Units, their joinery, and the granite cladding form a coordinated esthetic and the building’s exterior.

5.3 An IG Unit is the double paned window that functions as both an exterior wall and window to provide temperature and sound insulation and act as barrier like a wall while allowing the sightline visibility and transmission of natural light of a window. Each IG Unit has multiple component parts, its glass panes are set parallel to each other separated evenly by a metal spacer. The panes are connected to the spacer with

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1 a silicon structural sealant. Another sealant of primarily PIB is used to create a  
2 hermetically sealed air space between the panes of glass in the IG Unit supporting its  
3 thermal and acoustical insulating properties. The Chinook Building has nearly 3,000 IG  
4 Units.

5 **5.4** The glass lites in the IG Units at the Building, the panes, are made of clear  
6 glass; however, certain IG Units have been fritted – a process where an opaque  
7 ceramic film or frit is permanently adhered to the glass. The fritted IG Units of the  
8 Building were installed to create horizontal bands breaking up the verticality of the  
9 Building roughly along floor lines. Both the see-through (or vision) and fritted IG Units  
10 use Gray PIB as opposed to standard Black PIB.

11 **5.5** Viracon manufactured and supplied the IG Units installed at the Chinook  
12 Building. Upon information and belief, Quanex and TruSeal manufactured the PIB used  
13 by Viracon to manufacture the IG Units.

14 **5.6** On October 11, 2017, members of King County's Facilities Management  
15 Division first noticed a gray film or mottling appeared near the edges of some of the IG  
16 Units. This film or mottling was first discovered at the fritted windows along the western  
17 elevation of the Building about 20 feet above the loading dock off the alley. As the  
18 Facilities Management Division employees further examined the issue, it appeared that  
19 the fritted windows showed a greater degree of film formation or mottling than the vision  
20 windows, and due to the fritting the film formation or mottling could only be observed  
21 from the exterior.

22 **5.7** Within one month of discovery King County understood that the film  
23 formation was not dirt on the exterior of the glass, but the PIB sealant film or mottling  
24 could not be cleaned because it occurred between the two panes of glass in the  
25 hermetically sealed interior of the IG Units. As a result the PIB film or mottling could not  
26 be repaired without destroying the IG Units and the exterior glazing system to access  
27 the film formation. Additionally, the required repairs will damage the metal joinery

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1 between the IG Units, the connectors of the IG Units to the Building's structural system,  
2 and other finishes adjacent to the IG Units. The repairs necessary will also provide  
3 avenues for water intrusion that will damage adjacent building components and cause  
4 loss of use of the Building.

5 **5.8** Notice of the film formation and mottling was provided to Viracon no later  
6 than October 27, 2017 and on November 9, 2017 Rick Voelker, Viracon's Vice  
7 President of Technical Services, had visited the Building and observed the film  
8 formation and mottling.

9 **5.9** King County caused a Photographic Survey ("Survey") to be conducted of  
10 all the IG Units, which was completed between October 15 and 19, 2018. The Survey  
11 showed that film formation is present with varying degrees of severity on all of the  
12 Building's nearly 3,000 IG Units.

13 **5.10** Upon information and belief, the film formation and mottling occurs as a  
14 result of a performance malfunction and failure of the Gray PIB that creates the IG  
15 Unit's hermetic seal. Due to the performance malfunction, the Gray PIB has gradually  
16 and progressively formed a film migrating into the sightlines and glass of the IG Units  
17 impairing their ability to function as a window and the overall appearance of Building  
18 exterior. The film appears in various ways such as a dramatic expansion or stretching, a  
19 bubbling from the spacer onto the panes' interior surfaces, long solitary icicles, or a  
20 dripping band of seepage. Industry standard and manufacturer tolerances for the  
21 movement of PIB into the lites of the IG Units are no more than an 1/8<sup>th</sup> of an inch.  
22 Upon information and belief, all of the building's IG Units are manufactured with the  
23 same Gray PIB, and to varying degrees all are experiencing film formation, mottling,  
24 and migration beyond industry and manufacturer standards. Further, upon information  
25 and belief, the PIB film formation and mottling is continuing and progressing such that  
26 the problem will worsen over time in all of the Building's IG Units.

27 **5.11** Upon information and belief, the performance and longevity of the Gray

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1 PIB is not equal to that of the standard Black PIB.

2       **5.12** King County is informed and believes, and on that basis alleges, that for  
3 years, the industry standard PIB was black and included an ingredient called carbon  
4 black. Carbon black has numerous beneficial properties in this application, including  
5 protecting the PIB from degrading in sunlight. Nevertheless, Viracon used Gray PIB in  
6 manufacturing the IG Units for the Building and Quanex and TruSeal continued to  
7 manufacture the Gray PIB that was used for the IG Units of the Building.

8       **5.13** Viracon, Quanex, and TruSeal each had knowledge that the Gray PIB was  
9 defective and its performance was inferior to that of Black PIB, and that due to the  
10 defective nature, the Gray PIB IG Units would not be suitable for their intended  
11 purposes and that the performance of the Gray PIB and IG Units would not endure as  
12 intended or required. King County is informed and believes, and on that basis alleges,  
13 that prior to the start of construction at the Building, and continuing through the  
14 installation of the IG Units on the Building, Viracon, Quanex, and TruSeal acquired  
15 knowledge that the Gray PIB was defective and would fail. Indeed, as early as 2005  
16 Viracon was experiencing problems with the Gray PIB on the production line, which was  
17 communicated to Quanex and TruSeal, and which were not resolved by the time that  
18 Viracon began manufacturing and delivering the IG Units for use on the Building.

19       **5.14** Furthermore, King County is informed and believes that concurrently with  
20 the manufacturing and installation of defective IG Units on the Building, Viracon,  
21 Quanex, and TruSeal each knew of other buildings experiencing the same defective  
22 Gray PIB issues including lack of adhesion and/or cohesion, film formation and the  
23 failure of the hermetic seal, caused by among other things, its inability to withstand  
24 direct and indirect exposure to sunlight without suffering a decrease in its molecular  
25 weight. Instead of informing King County or others involved with the development of the  
26 Building about the defect or defects, Quanex and TruSeal continued to provide Gray  
27 PIB to Viracon, and Viracon continued to manufacture IG Units with the Gray PIB

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sealant, deliver them to King County, and allow them to be installed at the Building.

**5.15** The Defendants understood and knew that the type of damages King County complains of here were likely to occur, more likely to occur than if standard Black PIB were used in the IG Units, and did nothing to prevent the Gray PIB from reaching the marketplace, or prevent the installation on the Building of IG Units using the Gray PIB. Nor did the Defendants ever warn of the high potential that the damages complained of herein would occur if Gray PIB was used. Defendants also took no action to inform King County or others involved with the development of the Building after installation of the Building's IG Units of Gray PIB's performance issues known to Defendants, nor did Defendants undertake any form of investigation, provide notice, or recommend maintenance or mitigation measures related to the IG Units containing the Gray PIB. Instead, the Defendants each prepared and disseminated product literature indicating the Gray PIB performed as well as the Black PIB and could be used interchangeably with identical results.

**VI. FIRST CAUSE OF ACTION: STRICT PRODUCTS LIABILITY AGAINST VIRACON**

**6.1** King County incorporates herein by reference the allegations contained in Paragraphs 1.1 through 5.15.

**6.2** Viracon is a product seller as defined by RCW 7.72.010(1).

**6.3** Viracon is a manufacturer as defined by RCW 7.72.010(2).

**6.4** Quanex and/or TruSeal manufactured and sold to Viracon, and thereby placed on the market, the Gray PIB used on the IG Units for the Building.

**6.5** Viracon manufactured and sold, and thereby placed on the market, the IG Units used on the Building.

**6.6** In so placing the IG Units on the market, Viracon knew that the IG Units were to be used without inspection for defects.

**6.7** Viracon specifically knew it would be supplying IG Units to the Building

1 and that Viracon was responsible for the quality of the IG Units.

2       **6.8** The IG Units supplied and manufactured by Viracon contained latent  
3 manufacturing, design, and warning defects that caused physical damage to the  
4 Building. The IG Units contained those latent defects when they left Viracon's  
5 possession. The IG Units did not perform as an ordinary consumer would have  
6 expected them to perform when used in the manner used at the Building. The IG Units  
7 had potential risks that were known or knowable in light of the scientific knowledge that  
8 was generally accepted in the scientific community at the time of manufacture and  
9 installation of the IG Units at the Building. Those risks would not have been recognized  
10 by an ordinary user, but in fact presented a substantial danger of failure when used in  
11 the manner the IG Units were used at the Building. Viracon failed to adequately warn  
12 King County or others involved with the development of the Building of those risks.

13       **6.9** The IG Units provided by Viracon to the Building are not reasonably safe  
14 as designed and manufactured pursuant to RCW 7.72.030(1)(a) because they use and  
15 rely on the inferior and defective Gray PIB as a primary seal resulting in product  
16 performance below and failures beyond that contemplated by an ordinary user  
17 consumer.

18       **6.10** The IG Units provided by Viracon to the Building are not reasonably safe  
19 as designed pursuant to RCW 7.72.030(1)(b) & (c) because Viracon did not provide  
20 adequate warnings at the time of the IG Units' manufacture of the likelihood that the IG  
21 Units would cause King County's harms as complained of herein or similar harms or the  
22 seriousness of such harms that would necessitate destroying all of the nearly 3,000 IG  
23 Units at the Building and damaging the metal joinery between the IG Units, the  
24 connectors of the IG Units to the Building's structural system, and other finishes  
25 adjacent to the IG Units while providing avenues for water intrusion that will lead to  
26 further damages – all in order to accomplish the repair of the IG Units. Such repairs will  
27 also cause loss of use of the Building. Nor did Viracon act with regard as a reasonably

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1 prudent manufacturer would do in the same or similar circumstances to issue warnings  
2 after the IG Units' manufacture when Viracon learned of the danger they posed. Viracon  
3 never warned its IG Units could fail in the manner experienced by King County at the  
4 Building and result in the damages complained of herein.

5 **6.11** Had Viracon simply warned of the increased likelihood of failure of IG  
6 Units made with Gray PIB as opposed to those made with standard Black PIB, and the  
7 type and seriousness of the potential failures, King County or others involved with the  
8 development of the Building could and would have not allowed Gray PIB IG Units to be  
9 used at the Building.

10 **6.12** The IG Units provided by Viracon to the Building are not reasonably safe  
11 in construction or as manufactured pursuant to RCW 7.72.030(2)(a) because they  
12 materially deviate from the design specifications and performance standards of Viracon  
13 that indicate the damages complained of here would not occur or is not likely to occur.

14 **6.13** The damages and performance issues described herein all arose within  
15 the useful safe life of the IG Units. As the IG Units make up the exterior of the Building  
16 and are not intended to be replaced and would and should endure and perform for the  
17 life of the Building, the useful safe life of the IG Units is of the same magnitude of the  
18 Building itself and certainly in excess of 25 years from the date of delivery of the IG  
19 Units.

20 **6.14** The likelihood that the IG Units would cause the damages King County  
21 cites herein and similar damages, and the seriousness of those damages that require  
22 removal and replacement of every one of the nearly 3,000 IG Units on the Building,  
23 outweigh the burden on Viracon to design and manufacture a product that would have  
24 prevented those harms as the IG Units could have been designed and manufactured  
25 with standard Black PIB, a product that Viracon already used to produce IG Units.  
26 Furthermore, Viracon could have provided warnings that use of the IG Units could result  
27 in the type of damages complained of herein, which would have allowed King County or

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others involved with the development of the Building the opportunity to make a knowledgeable decision to install or avoid using the IG Units at the Building.

**6.15** The resulting performance and failures of the IG Units fell below that contemplated by an ordinary user consumer.

**6.16** As a direct and proximate result of Viracon's distribution of the defective IG Units, King County has suffered injury and damages in excess of the jurisdictional minimum. Specifically, King County has incurred and will continue to incur substantial costs to investigate and identify the numerous deficiencies and defects with the IG Units, and has and will continue to incur substantial additional costs to repair the deficient work, costs to repair property damaged by the deficient work, and has suffered special and other damages, all in amounts according to proof at trial.

**VII. SECOND CAUSE OF ACTION: STRICT PRODUCTS LIABILITY AGAINST QUANEX AND TRUSEAL**

**7.1** King County incorporates herein by reference the allegations contained in Paragraphs 1.1 through 6.16.

**7.2** Quanex and TruSeal are product sellers as defined by RCW 7.72.010(1).

**7.3** Quanex and TruSeal are manufacturers as defined by RCW 7.72.010(2).

**7.4** Quanex and/or TruSeal manufactured and sold to Viracon, and thereby placed on the market, the Gray PIB used on the IG Units for the Building.

**7.5** Viracon manufactured and sold, and thereby placed on the market, the IG Units used on the Building.

**7.6** In so placing the products on the market, Quanax and/or TruSeal knew that the products were to be used without inspection for defects.

**7.7** Quanex and/or TruSeal knew it would supply Gray PIB to Viracon for incorporation into IG Units that would be supplied for installation at projects like the Chinook Building at issue here.

## 7.8 The Gray PIB supplied and manufactured by Quanex and TruSeal

1 contained latent manufacturing, design, and warning defects that caused physical  
2 damage to the Building. The Gray PIB contained those defects when it left the  
3 possession of Quanex and/or TruSeal. The Gray PIB did not perform as an ordinary  
4 consumer would have expected it to perform when used in the manner used at the  
5 Building. The Gray PIB sealant had potential risks that were known or knowable in light  
6 of the scientific knowledge that was generally accepted in the scientific community at  
7 the time of manufacture and installation of the Gray PIB and IG Units at the Building.  
8 Those risks would not have been recognized by an ordinary user, but in fact presented  
9 a substantial danger of failure when used in the manner the IG Units and Gray PIB were  
10 used at the Building. Quanex and TruSeal failed to adequately warn King County of  
11 those risks.

12       **7.9** The Gray PIB provided by Quanex and TruSeal that was used for the IG  
13 Units at the Building is not reasonably safe as designed and manufactured pursuant to  
14 RCW 7.72.030(1)(a) because it fails to withstand direct and indirect exposure to sunlight  
15 without suffering a decrease in its molecular weight, causing along with other factors, a  
16 lack of adhesion and/or cohesion, film formation and the failure of the hermetic seal  
17 resulting in product performance below and failures beyond that contemplated by an  
18 ordinary user consumer.

19       **7.10** The Gray PIB provided by Quanex and TruSeal that was used for the IG  
20 Units at the Building is not reasonably safe as designed pursuant to RCW  
21 7.72.030(1)(b) & (c) because Quanex and TruSeal did not provide adequate warnings at  
22 the time of the Gray PIB's manufacture of the likelihood that the Gray PIB would cause  
23 King County's harms as complained of herein or similar harms or the seriousness of  
24 such harms that would necessitate destroying all of the nearly 3,000 IG Units at the  
25 Building and damaging the metal joinery between the IG Units, the connectors of the IG  
26 Units to the Building's structural system, and other finishes adjacent to the IG Units  
27 while providing avenues for water intrusion that will lead to further damages – all in

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1 order to accomplish the repair of the IG Units. Such repairs will also cause loss of use of  
2 the Building. Nor did Quanex and TruSeal act with regard as a reasonably prudent  
3 manufacturer would do in the same or similar circumstances to issue warnings after the  
4 Gray PIB's manufacture when Quanex and TruSeal learned of the danger it posed.  
5 Quanex and TruSeal never warned its Gray PIB could fail in the manner experienced by  
6 King County at the Building and result in the damages complained of herein.

7       **7.11** Had Quanex and TruSeal simply warned of the increased likelihood of  
8 failure of IG Units made with Gray PIB as opposed to those made with standard Black  
9 PIB, and the type and seriousness of the potential failures, King County or others  
10 involved with the development of the Building could and would have not allowed Gray  
11 PIB to be used at the Building.

12       **7.12** The Gray PIB provided by Quanex and TruSeal that was used for the IG  
13 Units at the Building is not reasonably safe in construction or as manufactured pursuant  
14 to RCW 7.72.030(2)(a) because it materially deviates from the design specifications and  
15 performance standards of Quanex and TruSeal that indicate the damages complained  
16 of here would not occur or is not likely to occur.

17       **7.13** The damages and performance issues described herein all arose within  
18 the useful safe life of industry standard IG Unit PIB. As the IG Units make up the  
19 exterior of the Building and are not intended to be replaced and would and should  
20 endure and perform for the life of the Building, the useful safe life of the IG Units is of  
21 the same magnitude of the Building itself and certainly in excess of 25 years from the  
22 date of delivery of the IG Units. Because the Gray PIB cannot be serviced or repaired  
23 without destroying the IG Units, the useful safe life of industry standard IG Unit PIB is  
24 intended to be the same as the IG Units themselves, which is certainly in excess of 25  
25 years.

26       **7.14** The likelihood that the Gray PIB would cause the damages King County  
27 cites herein and similar damages, and the seriousness of those damages that require

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removal and replacement of every one of the nearly 3,000 IG Units on the Building, outweigh the burden on the Quanex and TruSeal to design and manufacture a product that would have prevented those harms. Indeed Quanex and TruSeal already produce a product, Black PIB, that is actually the standard configuration and does not result in the frequency or severity of damages as that experienced with the Gray PIB as complained of herein. Furthermore, Quanex and TruSeal could have provided warnings that use of the Gray PIB could result in the type of damages complained of herein, which would have allowed King County or others involved with the development of the Building the opportunity to make a knowledgeable decision to allow or disallow Gray PIB IG Units at the Building.

**7.15** The resulting performance and failures of the Gray PIB fell below that contemplated by an ordinary user consumer.

**7.16** As a direct and proximate result of Quanex and TruSeal's distribution of the defective Gray PIB, King County has suffered injury and damages in excess of the jurisdictional minimum. Specifically, King County has incurred and will continue to incur substantial costs to investigate and identify the numerous deficiencies and defects with the IG Units, and has and will continue to incur substantial additional costs to repair the deficient work, costs to repair property damaged by the deficient work, and has suffered special and other damages, all in amounts according to proof at trial.

### **VIII. THIRD CAUSE OF ACTION: FRAUD AGAINST VIRACON**

**8.1** King County incorporates herein by reference the allegations contained in Paragraphs 1.1 through 7.16.

**8.2** Viracon's product literature indicates that the IG Units it manufactured that were ultimately installed at the Building were suitable for their intended purpose to provide temperature and sound insulation and act as barrier while allowing the sightline visibility and transmission of natural light, and that such performance would endure.

Viracon's product literature also misrepresented that the IG Units manufactured with 15276210.7

1 Gray PIB would perform and endure as the equivalent of the IG Units manufactured with  
2 standard Black PIB. Such misrepresentations by Viracon were made to induce  
3 purchases of IG Units that were manufactured with Gray PIB, purchases such as those  
4 that resulted in the IG Units installed at the Building.

5 **8.3** Furthermore, King County is informed and believes, and on that basis  
6 alleges, that for years, the industry standard PIB was black and included an ingredient  
7 called carbon black. Carbon black has numerous beneficial properties in this  
8 application, including protecting the PIB from degrading in sunlight. Nevertheless,  
9 Viracon used Gray PIB in manufacturing the IG Units for the Building.

10 **8.4** Viracon had knowledge that the Gray PIB was defective and its  
11 performance was inferior to that of Black PIB, and that due to the defective nature, the  
12 Gray PIB and IG Units would not be suitable for their intended purposes and that the  
13 performance of the Gray PIB and IG Units would not endure as intended or required.  
14 King County is informed and believes, and on that basis alleges, that prior to the start of  
15 construction at the Building, and continuing through the installation of the IG Units on  
16 the Building, Viracon acquired knowledge that the Gray PIB it was using was defective  
17 and would fail. Indeed, as early as 2005 Viracon was experiencing problems with the  
18 Gray PIB on the production line, which were not resolved by the time that Viracon  
19 began manufacturing and delivering the IG Units for use on the Building.

20 **8.5** Furthermore, King County is informed and believes that concurrently with  
21 the manufacturing and installation of defective IG Units on the Building, Viracon knew of  
22 other buildings experiencing the same defective Gray PIB issues including lack of  
23 adhesion and/or cohesion, film formation and the failure of the hermetic seal, caused by  
24 among other things, its inability to withstand direct and indirect exposure to sunlight  
25 without suffering a decrease in its molecular weight. Instead of informing King County or  
26 others involved with the development of the Building about the defect or defects,  
27 Viracon continued to manufacture IG Units with the Gray PIB sealant, deliver them to

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1 King County, and allow them to be installed at the Building.

2       **8.6** With knowledge of the falsity of its representation that IG Units  
3 manufactured with Gray PIB would function as the equivalent to those manufactured  
4 with Black PIB, Viracon put IG Units containing inferior and defective Gray PIB into the  
5 marketplace and did not provide notice of their defective and inferior qualities.

6       **8.7** King County is informed and believes, and on that basis alleges, that as  
7 between King County and those involved with the development of the Building on the  
8 one hand and Viracon on the other hand, Viracon alone had knowledge of such material  
9 facts and actively misrepresented the known information in addition to intentionally  
10 concealing this information from King County and others involved with the development  
11 of the Building. In despicable pursuit of profits, with oppression, fraud, malice, deliberate  
12 or flagrant disregard, reckless indifference, and/or evil motive and with conscious  
13 disregard of King County's rights, Viracon continued to manufacture and deliver  
14 defective Gray PIB and IG Units for installation into the curtainwall system at the  
15 Building. This was in disregard to the unjust hardship to King County of ultimately  
16 having to remove and replace all of the IG Units at the Building. This conduct was  
17 authorized by managing agents at Viracon who possessed knowledge of the defective  
18 performance of the Gray PIB both during the IG Unit production and as installed in the  
19 field and the continued keeping of the information secret; and who also falsely  
20 marketed, since at least July 15, 2002, that the Gray PIB had the same long term  
21 durability as IG Units utilizing Black PIB for its primary seal.

22       **8.8** King County and those involved with the development of the Building had  
23 no knowledge of any problems with the Gray PIB being used in the IG Units at the  
24 Building, nor was such information reasonably discoverable by King County.  
25 Accordingly, King County and those involved with the development of the Building  
26 reasonably relied on Viracon's apparent reputation as a manufacturer of high-quality IG  
27 Units, and Viracon's non-disclosure of the problems plaguing IG Units utilizing Gray PIB

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1 primary sealant.

2       **8.9** Had King County or others involved with the development of the Building  
3 known that the Gray PIB was causing Viracon's unusual production problems and the  
4 owners of other buildings to suffer damages from defective IG Units, or been advised  
5 that Gray PIB IG Units would perform in the manner actually experienced at the  
6 Building, King County would not have allowed the Gray PIB to be used in the IG Units  
7 installed at the Building.

8       **8.10** Viracon was required to speak to avoid allowing consumers to use and be  
9 damaged by a product it manufactured and knew to be defective particularly in light of  
10 the seriousness of the damages its concealment would cause including those  
11 necessary to repair the IG Units.

12       **8.11** As a direct and proximate result of Viracon's concealment of these facts  
13 from King County and those involved with the development of the Building and the  
14 placement of nearly 3,000 IG Units at the Building with defective Gray PIB, King County  
15 has suffered injuries and damages in excess of the jurisdictional minimum, which will be  
16 established in an amount according to proof at trial.

17       **8.12** Further, Viracon's conduct, as alleged above, was done with an intentional  
18 and conscious disregard of King County's rights and with oppression, fraud, malice,  
19 deliberate or flagrant disregard, reckless indifference, and/or evil motive entitling King  
20 County to an award of punitive and exemplary damages assessed against Viracon, in  
21 sums according to proof, as a means of deterring Viracon from committing similar acts  
22 and omissions in the future and punishing Viracon for its wrongful conduct.

23 **IX. FOURTH CAUSE OF ACTION: FRAUD AGAINST QUANEX AND TRUSEAL**

24       **9.1** King County incorporates herein by reference the allegations contained in  
25 Paragraphs 1.1 through 8.12.

26       **9.2** King County is informed and believes, and on that basis alleges, that for  
27 years, the industry standard PIB was black and included an ingredient called carbon

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1 black. Carbon black has numerous beneficial properties in this application, including  
2 protecting the PIB from degrading in sunlight. Nevertheless, Quanex and TruSeal  
3 developed, marketed, and sold Gray PIB that was used at the Building.

4       **9.3** Quanex and TruSeal had knowledge that the Gray PIB was defective and  
5 its performance was inferior to that of Black PIB, and that due to the defective nature,  
6 the Gray PIB would not be suitable for its intended purpose and that the performance of  
7 Gray PIB IG Units would not endure as intended or required. King County is informed  
8 and believes, and on that basis alleges, that prior to the start of construction at the  
9 Building, and continuing through the installation of the IG Units on the Building, Quanex  
10 and TruSeal acquired knowledge that the Gray PIB it was using was defective and  
11 would fail. Indeed, as early as 2005 Quanex and TruSeal learned that Viracon was  
12 experiencing problems with the Gray PIB on the production line, which were not  
13 resolved by the time that Viracon began manufacturing and delivering the IG Units for  
14 use on the Building.

15       **9.4** Furthermore, King County is informed and believes that concurrently with  
16 the manufacturing and installation of defective IG Units on the Building, Quanex and  
17 TruSeal knew of other buildings experiencing the same defective Gray PIB issues  
18 including lack of adhesion and/or cohesion, film formation and the failure of the hermetic  
19 seal, caused by among other things, its inability to withstand direct and indirect  
20 exposure to sunlight without suffering a decrease in its molecular weight. Instead of  
21 informing King County or others involved with the development of the Building about the  
22 defect or defects, Quanex and TruSeal continued to manufacture Gray PIB sealant for  
23 IG Units which were to be delivered to King County, and allow them to be installed at  
24 the Building.

25       **9.5** With knowledge of the falsity of its representation that Gray PIB would  
26 function as the equivalent to Black PIB, Quanex and TruSeal allowed IG Units to be  
27 manufactured that contained inferior and defective Gray PIB, which entered the

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1 marketplace with no notice of their defective and inferior qualities.

2       **9.6** King County is informed and believes, and on that basis alleges, that as  
3 between King County and those involved with the development of the Building on the  
4 one hand and Quanex and TruSeal on the other, Quanex and TruSeal alone had  
5 knowledge of such material facts and intentionally concealed this information from King  
6 County and others involved with the development of the Building. In despicable pursuit  
7 of profits, with oppression, fraud, malice, deliberate or flagrant disregard, reckless  
8 indifference, and/or evil motive and with conscious disregard of King County's rights,  
9 Quanex and TruSeal continued to manufacture and deliver defective Gray PIB for  
10 installation into the curtainwall system at the Building. This was in disregard to the  
11 unjust hardship to King County of ultimately having to remove and replace all of the IG  
12 Units at the Building. This conduct was authorized by managing agents at Quanex and  
13 TruSeal who possessed knowledge of the defective performance of the Gray PIB both  
14 during the IG Unit production and as installed in the field and the continued keeping of  
15 the information secret; and who also falsely marketed, since at least July 15, 2002, that  
16 the Gray PIB had the same long term durability as IG Units utilizing Black PIB for its  
17 primary seal.

18       **9.7** King County and those involved with the development of the Building had  
19 no knowledge of any problems with the Gray PIB being used in the IG Units at the  
20 Building, nor was such information reasonably discoverable by King County.  
21 Accordingly, King County and those involved with the development of the Building  
22 reasonably relied on Viracon's apparent reputation as a manufacturer of high-quality IG  
23 Units, and Viracon's non-disclosure of the problems plaguing IG Units utilizing Gray PIB  
24 primary sealant.

25       **9.8** Had King County or others involved with the development of the Building  
26 known that the Gray PIB was causing Viracon's unusual production problems and the  
27 owners of other buildings to suffer damages from defective IG Units, or been advised

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1 that Gray PIB would perform in the manner actually experienced at the Building, King  
2 County or others involved with the development of the Building would not have allowed  
3 the Gray PIB to be installed at the Building.

4 **9.9** Quanex and TruSeal were required to speak to avoid allowing consumers  
5 to use and be damaged by a product it manufactured and knew to be defective  
6 particularly in light of the seriousness of the damages its concealment would cause  
7 including those necessary to repair the Gray PIB.

8 **9.10** As a direct and proximate result of Quanex and TruSeal's concealment of  
9 these facts from King County and those involved with the development of the Building  
10 and the placement of nearly 3,000 IG Units at the Building with defective Gray PIB, King  
11 County has suffered injuries and damages in excess of the jurisdictional minimum,  
12 which will be established in an amount according to proof at trial.

13 **9.11** Further, Quanex and TruSeal's conduct, as alleged above, was done with  
14 an intentional and conscious disregard of King County's rights and with oppression,  
15 fraud, malice, deliberate or flagrant disregard, reckless indifference, and/or evil motive  
16 entitling King County to an award of punitive and exemplary damages assessed against  
17 Quanex and TruSeal, in sums according to proof, as a means of deterring Quanex and  
18 TruSeal from committing similar acts and omissions in the future and punishing Quanex  
19 and TruSeal for their wrongful conduct.

## 20 **X. JOINT AND SEVERAL LIABILITY**

21 **10.1** King County incorporates herein by reference the allegations contained in  
22 Paragraphs 1.1 through 9.11.

23 **10.2** Pursuant to RCW 4.22.070(1)(a) & (b), Viracon, Quanex, and TruSeal are  
24 jointly and severally liable for the damages of King County because King County was  
25 not at fault in incurring the property damages at the Building and the defendants acted  
26 in concert with each other in causing the damages.

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**XI. PUNITIVE DAMAGES**

**11.1** King County incorporates herein by reference the allegations contained in Paragraphs 1.1 through 10.2.

**11.2** Applying Washington choice of law rules, King County seeks punitive and exemplary damages against Viracon under Minnesota law allowing for such in the cases of products liability and fraud allegations. See *Minn. Stat. § 549.20*.

**11.3** Applying Washington choice of law rules, King County seeks punitive and exemplary damages against Quanex under Ohio and Texas law allowing for such in the cases of products liability and fraud allegations. See *Ohio Rev. Code §§ 2307.80 & 2315.21; Tex. Civ. Prac. & Rem. Code § 41.003*.

**11.4** Applying Washington choice of law rules, King County seeks punitive and exemplary damages against TruSeal under Delaware and Texas law allowing for such in the cases of products liability and fraud allegations. See *Jardel Co. v. Hughes* (Del. 1987) 523 A.2d 518, 529 & *Tex. Civ. Prac. & Rem. Code § 41.003*.

**XII. DEMAND FOR JURY TRIAL**

**12.1** King County demands that all issues herein be tried by a jury pursuant to FRCP Rule 38.

**XIII. PRAYER FOR RELIEF**

Wherefore, King County prays for judgment against Viracon, Quanex, and TruSeal as follows:

1. For compensatory damages according to proof at trial;
2. For general, special, and other damages according to proof at trial;
3. For costs of investigation to identify the defects and necessary repairs;
4. For pre-judgment and post-judgment interest at the maximum amount and rate permitted by law;
5. For costs of suit herein;
6. For punitive and/or exemplary damages; and

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7. For such other relief as the Court may deem just and proper.

DATED:  
April 8, 2019

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